

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Meridian Communications of Idaho, Inc.)	File No. BPCT-19950306KF
)	Facility ID No. 41238
Application for Construction Permit for)	
New Television Station on Channel 20)	
Idaho Falls, Idaho)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: January 7, 2011

Released: January 11, 2011

By the Commission: Commissioner Copps issuing a statement.

I. INTRODUCTION

1. The Commission has before it an Application for Review filed by NPG of Idaho, Inc. ("NPG") on August 22, 2005.¹ NPG seeks review of the staff's denial of a Petition for Reconsideration of the grant of the above-captioned application of Meridian Communications of Idaho, Inc. ("Meridian") for a construction permit for a new television station on Channel 20 at Idaho Falls, Idaho.² For the reasons set forth below, we deny the Application for Review.

II. BACKGROUND

2. The above-captioned application raises issues that were first addressed by the staff in a 1995 letter approving the assignment of stations KPVI(TV), Pocatello, Idaho, KKVI(TV), Twin Falls, Idaho, and KJVI(TV), Jackson, Wyoming, from Ambassador Media Corporation to Sunbelt Broadcasting Company ("Sunbelt").³ In that proceeding, The Post Company ("Post"), a predecessor-in-interest to NPG, and Retlaw Enterprises, Inc., opposed the assignment application on the basis that James Rogers, the single majority shareholder of Sunbelt, was also the real-party-in-interest to the application for a new television station on Channel 20 at Idaho Falls, Idaho, filed by Meridian, whose principals were Suzanne and Perry Rogers, James Rogers' children. Were James Rogers the real-party-in-interest in the Channel 20 application, he would have controlled two stations in violation of the existing local television ownership rule.⁴

¹ Sunbelt Communications Company filed an opposition on September 6, 2005, Meridian Communications of Idaho, Inc., filed an opposition on September 8, 2005, and NPG filed replies to each on September 13, 2005, and September 16, 2005. On October 13, 2005, Meridian Communications of Idaho, Inc., filed an opposition to NPG's reply to Meridian's opposition, as well as a motion to file this opposition.

² *Meridian Communications of Idaho, Inc.*, 20 FCC Red 12428 (MB Vid. Div. 2005).

³ *Letter from Barbara A. Kreisman, Chief, Video Services Division, to Ambassador Media Corporation, et al.* (Sept. 29, 1995).

⁴ 47 C.F.R. § 73.3555(b) (1995). At the time, the local television ownership rule was implicated solely by Grade B contour overlap, and the Commission did not consider whether the stations were located within the same Nielsen Designated Market Area ("DMA"). The staff concluded that the Grade B contours of station KJVI(TV) (now KJWY(TV)) and station KPVI(TV) did not overlap. Station KJWY(TV) has since been sold to PMCM TV. Stations KKVI(TV) (now KXTF(TV)) and KJVI(TV) implicated neither the local television ownership rule in force in 1995, nor the rule as revised in 1999.

3. In the 1995 letter, the staff found that the “limited familial and business relationships between Mr. Rogers and the Meridian principals do not raise a [substantial and material] question as to whether Mr. Rogers is the real-party-in-interest to the Meridian application.”⁵ The staff concluded that “[t]he links between Meridian and Sunbelt do not establish significant similarity between the two entities or a pattern of interdependence which could demonstrate the presence of common control,” and that “the relationships revealed are far less in number and substance than those we have permitted in other situations.”⁶

4. Subsequent to filing of the Petition to Deny at issue in the 1995 letter, Post amended a pending Petition to Deny Meridian’s above-captioned Channel 20 application, raising arguments similar to those denied in 1995. On July 22, 2003, the staff denied the Petition to Deny the above-captioned application, as supplemented, and granted the above-captioned application, finding that it had “previously rejected a real-party-in-interest argument by Post with respect to Meridian’s application and Sunbelt.”⁷ The staff further relied on the sworn affidavits of James and Suzanne Rogers. James Rogers certified that he was not an officer, director or shareholder of Meridian, or any other company involving his children, and that James’ children did not hold any officer, director, or shareholder position in Sunbelt or its subsidiaries. The grant letter further found that James Rogers had certified that Sunbelt and Meridian are separate, independent companies; and that Suzanne Rogers’ legal representation of Sunbelt and her drafting of application forms and exhibits did not raise a question as to whether James Rogers was the real-party-in-interest in Meridian.

5. Post filed a Petition for Reconsideration of the staff’s decision to grant the above-captioned application, arguing, among other things, that the staff incorrectly relied upon Suzanne Rogers’ broadcast experience in determining that Sunbelt and Meridian were independent companies, and that the staff erred in relying on a previous staff decision addressing the same allegations. The staff denied the Petition for Reconsideration on July 21, 2005.⁸ The staff found that any inquiry into whether familial relationships raise real-party-in-interest issues involves a fact-based evaluation of influence and control. The staff further found that Suzanne Rogers’ broadcast experience was relevant in determining whether she was in a position of influence and control, and that Post provided no evidence to rebut the certifications contained in the James and Suzanne Rogers affidavits.

6. In its Application for Review, NPG argues that the staff’s decision to grant the application violates the Commission’s broadcast television local ownership rule and will harm competition and diversity in the Idaho Falls-Pocatello market. In particular, NPG asserts that grant of the application gives the Rogers family control of three TV stations in the market and claims that the staff erred in failing “to attribute to the Rogers children’s Channel 20 application the interests of patriarch James Rogers in his two Sunbelt TV stations in the same DMA.”⁹ In support of this argument, NPG reiterates its complaint that Suzanne Rogers was legal counsel for Sunbelt’s licensees, and alleges that, in the past, Sunbelt eventually acquired an interest or business involvement in the Rogers children’s television stations.¹⁰ NPG contends that the staff has “arbitrarily ignore(d) both the overwhelming

⁵ *Id.* at 2.

⁶ *Id.* at 3. See *Kern Broadcasting Corporation*, 10 FCC Rcd 6584 (1995) (no real-party-in-interest found where licensee’s brother and father guaranteed licensee’s debt; participated in joint sales agreement with licensee; and where licensee co-owned with brother the studio site of competing radio station).

⁷ *Letter from Barbara A. Kreisman, Chief, Video Division, to Meridian Communications of Idaho, Inc.*, at 4 (July 22, 2003).

⁸ *Meridian Communications of Idaho, Inc.*, *supra* note 2.

⁹ NPG Application for Review at 4.

¹⁰ *Id.* at 4.

evidence of intertwined familial relationships between Sunbelt and the ‘children’s’ stations” and the agency’s controlling precedent.¹¹ NPG challenges the staff’s reliance on the certifications contained in the various affidavits produced in this proceeding, maintaining that they are “mere ‘sworn statements,’” and asserts that staff should have required the submission of further information regarding “the intertwining interests that developed after the children’s past acquisition of broadcast stations.”¹² NPG also argues that the staff should have consolidated this proceeding with another proceeding involving a time brokerage agreement between Sunbelt and the third-party licensee of KFXP(TV), Pocatello, Idaho.¹³ Meridian and Sunbelt, in their respective oppositions, argue that the allegations in the Application for Review are repetitious, and request that the Commission sanction NPG for abuse of Commission processes.¹⁴ Meridian argues that all three of the staff decisions addressing the real-party-in-interest issue are well-reasoned.

7. In its reply, NPG asks the Commission to dismiss Meridian’s opposition as untimely.¹⁵ Although Meridian claims that it filed its opposition in a timely manner, the Commission has no record of having received the opposition before September 8, 2005, two days after it was due, and Meridian has not provided any evidence to the contrary. Because Meridian did not seek leave to file its pleading after the deadline prescribed in the Commission’s rules and has not demonstrated good cause for its late filing, we will dismiss it.¹⁶

III. DISCUSSION

8. NPG and its predecessor-in-interest, Post, consistently have opposed the above-captioned application on the ground that the real-party-in-interest to the application is James Rogers, the father of Suzanne and Perry Rogers. A finding that James Rogers is the real-party-in-interest would preclude grant of the application because he would control two television stations in the Idaho Falls-Pocatello DMA, in

¹¹ *Id.*

¹² *Id.* at 4-5. In this regard, NPG alleges that the staff grant “appears to ignore evidence in this record of the Rogers family’s ‘commingling of ownership or other interests in the media business.’” *Id.* at 5 (emphasis in original). In support, NPG claims that stations in Helena, Montana, and Laughlin, Nevada, are operated under time brokerage agreements with Sunbelt, *id.* at 4-5 nn. 7, 9, and claims that “[i]t would be consistent with James Rogers’ past practice for Sunbelt to enter into a Joint Sales Agreement, a Shared Facilities Agreement, and limited programming agreement with the ‘children’s’ MCL.” *Id.* at 5-6, n. 11.

¹³ *Id.* at 3-4. NPG alleges that Sunbelt has operated station KFXP(TV) pursuant to an unlawful time brokerage agreement. Station KFXP(TV) is located in the same Idaho Falls-Pocatello, Idaho DMA as Sunbelt’s station KPVI(TV).

¹⁴ Meridian and Sunbelt also argue that the Application for Review should be dismissed pursuant to Section 1.115(a) of the Commission’s rules since it did not contain a statement describing with particularity how NPG, as the successor-in-interest of Post, is aggrieved by the action taken. 47 C.F.R. §1.115(a). NPG argues that it has standing as the new licensee of station KIFI-TV, Idaho Falls, Idaho. We need not address the standing challenge, as we are denying the Application for Review on substantive grounds.

¹⁵ Reply of NPG of Idaho, Inc. to “Untimely” Opposition of Meridian to Application for Review at 1-2. In addition, NPG alleges that Sunbelt and its attorneys have previously represented Meridian’s interests before the Commission and that Meridian’s attorney has also represented Sunbelt, demonstrating, in its view, a commingling of interests. NPG also asserts that Sunbelt’s counsel “appears to have” signed Meridian’s opposition and states that if this is the case, then the pleading was unlawfully signed in violation of Commission rules. Meridian refutes this allegation, stating that the attorney who signed its opposition worked for the law firm then representing Meridian. *Id.* at 2-3.

¹⁶ See *JNE Investments, Inc.*, 23 FCC Rcd 623, 628-29 (2008) (dismissing late-filed opposition where filer failed to submit a motion for extension of time); *Kennebec Valley Television, Inc., Sebago Broadcasting Co.*, 3 FCC Rcd 4522 (1988) (rejecting application amendment submitted one day late due to courier’s failure to deliver on due date). Because we are granting NPG’s request to dismiss Meridian’s untimely opposition, we need not address the other arguments raised in NPG’s reply to Meridian’s opposition or in Meridian’s response to NPG’s reply.

violation of the local television ownership rule.¹⁷ The staff has addressed the relationship between James Rogers as principal of Sunbelt and Suzanne and Perry Rogers as principals of Meridian on three separate occasions. We conclude that the staff has adequately analyzed all the facts and circumstances involved in this proceeding and properly determined that Post has failed to raise a substantial and material question of fact as to whether James Rogers is the real-party-in-interest to the Meridian application. NPG has set forth no new facts in its Application for Review that would justify either a reversal of the staff's prior decisions on the real-party-in-interest issue, or a finding that James Rogers otherwise holds an attributable interest in Meridian.

9. In the 1992 *Spousal Attribution Order*, the Commission revised its spousal attribution policy, ruling that “the media interests of one spouse will not be presumptively attributed to the other solely on the basis of marital status.”¹⁸ In so ruling, the Commission concluded that it would treat marital relationships the same as other family relationships for attribution purposes. The Commission clarified that it would examine the facts and circumstances presented to determine whether a family member's media interests will be independent and not subject to common influence or control.¹⁹ As explained in all three prior staff decisions, the Commission enunciated in the *Spousal Attribution Order* the following seven factors considered relevant in making case-by-case determinations regarding family attribution: (1) representations about the independence of family members' media interests; (2) commingling of media business interests; (3) family members' participation in the financial affairs, programming and personnel decisions of each other's media interests; (4) prior broadcast experience of the individuals seeking to establish independent interests; (5) financial independence; (6) sharing of personnel, equipment, contractors or programming information; and (7) involvement by family members in the acquisition or application process.²⁰ The Commission has repeatedly found that “a petitioner attempting to raise a real-party-in-interest issue [based on a family relationship carries] a heavy burden,” given the typical financial ties between family members.²¹ In interpreting the *Spousal Attribution Order*, the Commission has made clear that the existence or non-existence of one, or many, of the factors listed above is not necessarily dispositive, and that, in such cases the Commission looks at the totality of the circumstances, weighing all the evidence before it to determine whether or not the family members' media interests will be independent and not subject to common influence or control.²²

10. As the staff correctly found in its previous decisions in this proceeding, “[i]n our analysis of whether a family member's media interests should be attributed we attach a great deal of importance to statements and declarations that show that such media interests are independently held and not subject to common influence and control.”²³ Thus, the Commission and staff have traditionally placed emphasis on

¹⁷ Under the local television ownership rule, common ownership of two full-power television stations in the same DMA is permitted if the Grade B contours do not overlap; or eight independently owned and operating full-power commercial and noncommercial television stations will remain in the DMA post-transaction, and at least one of the two stations to be commonly owned is not ranked among the top four television stations in the DMA based on the most recent all-day (9:00 a.m. – midnight) Nielsen audience share. 47 C.F.R. § 73.3555(b). If we were to find common ownership and control of Sunbelt's station KPVI(TV), Pocatello, Idaho, and the proposed Channel 20 at Idaho Falls, grant of the above-captioned application would violate the rule because the Grade B contours of the two stations would overlap and there would remain only seven independently owned and operating commercial and noncommercial television stations in the market.

¹⁸ *Clarification of Commission Policies Regarding Spousal Attribution*, 7 FCC Rcd 1920 (1992) (“*Spousal Attribution Order*”).

¹⁹ See, also, *Sevier Valley Broadcasting, Inc.*, 10 FCC Rcd at 9796.

²⁰ *Spousal Attribution Order*. 7 FCC Rcd at 1922.

²¹ *Kern Broadcasting Corporation*, 10 FCC Rcd at 6585-6586.

²² *Sevier Valley Broadcasting, Inc.*, 10 FCC Rcd at 9796-9797.

²³ *Meridian Communications of Idaho, Inc.*, 20 FCC Rcd at 12422-12423.

factor (1) of the attribution analysis. The staff's decision to place emphasis on the affidavits of James and Suzanne Rogers to support its finding that Sunbelt and Meridian are independent therefore was consistent with Commission precedent. While shared counsel may implicate factor (6), the Commission has previously found that shared use of counsel by family members does not in itself warrant a finding of attribution,²⁴ and NPG has not provided evidence that Suzanne Rogers' service as legal counsel to Sunbelt or any sharing of other legal counsel indicates involvement of James Rogers in Meridian's programming, personnel or financial decision making. The staff also considered NPG's and its predecessor's arguments regarding the alleged intertwining of the Rogers family's business interests, and concluded that NPG's claim that further inquiry is necessary is not supported by precedent.²⁵

11. Because we do not find that NPG has raised a substantial and material question as to whether Sunbelt and Meridian are under common control, NPG has failed to show any adverse consequence to competition and diversity as a result of grant of the above-captioned application. In addition, because NPG has not raised a substantial and material question as to whether either Sunbelt or James Rogers is the real-party-in-interest in Meridian's application, Sunbelt's relationship with KFXP(TV), if any, is not relevant to our disposition of Meridian's application.²⁶ Based on the foregoing, we find that NPG has failed to show that staff acted inconsistently with statute, regulation, case precedent or Commission policy. We find no error in the staff's decisions. Thus, we deny the Application for Review.²⁷

²⁴ *Sevier Valley Broadcasting, Inc.*, 10 FCC Rcd at 9798.

²⁵ In support of its argument, NPG cites *Sevier Valley Broadcasting, Inc.*, 10 FCC Rcd at 9796. Far from supporting NPG's argument that the Commission should have inquired further into the relationship between Sunbelt and Meridian in other markets, the case holds that "past involvement in a family member's business, even if substantial, does not necessarily demonstrate future involvement or a commingling of ownership interests." *Id.* at 9797. See also *Kern Broadcasting Corporation*, 10 FCC Rcd at 6586 (so long as applicant divested his broadcast interests in facilities held by father and brother in market at issue, no attribution required despite the fact that applicant would retain broadcast interests with father and brother in another market).

²⁶ As noted above, it has been alleged in another proceeding that Sunbelt controls and/or has an attributable interest in two stations in the Idaho Falls-Pocatello DMA due to a local marketing agreement ("LMA") with the licensee of station KFXP(TV). See note 13 supra. In addition, Meridian Communications of Montana, Inc., is seeking consent to acquire a 100% stock interest in Rocky Mountain Broadcasting Company ("Rocky Mountain"), licensee of station KMTF(TV), Helena, Montana. File No. BTCCT-20060915APG. Currently, Meridian holds a 49% voting stock interest in Rocky Mountain, while Uhlmann/Latshaw Broadcasting, LLC, holds a controlling 51% stock interest. Beartooth Communications Company, a subsidiary of Sunbelt, is the licensee of in-market station KTVH(TV), Helena, Montana. On October 27, 2010, Rocky Mountain filed as an amendment to its transfer of control application a Joint Sales Agreement, Shared Services Agreement, Construction and Lease Agreement, and Co-Location/Co-Use Agreement between it and Beartooth. The staff will examine the station KMTV(TV) transfer of control application for compliance with the Commission's rules and policies requiring that a licensee retain de facto control over its stations. Our decision here is not intended to prejudice in any way the issues raised in the proceeding seeking consent to transfer control of station KMTF(TV) to Meridian, or our consideration of the allegations concerning the station KFXP(TV) LMA.

²⁷ While Post and now NPG have raised issues that were before the staff on three separate occasions, Sunbelt has not demonstrated that the Application for Review was frivolous or was filed with an intent to subvert the Commission's procedures governing license applications. *Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuse of the Renewal Process*, First Report and Order, 4 FCC Rcd. 4780, 4793 n.3 (1989). See *Silver Star Communications-Albany, Inc.*, 3 FCC Rcd. 6342, 6352 (1988); *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Process*, Notice of Proposed Rulemaking, 2 FCC Rcd. 5563, 5563 (1987). Therefore, we decline to sanction NPG as requested by Sunbelt in its opposition.

IV. ORDERING CLAUSES

12. **ACCORDINGLY, IT IS ORDERED**, That, pursuant to Section 1.115 of the Commission's rules, NPG of Idaho, Inc.'s Application for Review **IS DENIED**, and the letter decision by the Chief, Video Division, Media Bureau, denying NPG of Idaho, Inc.'s Petition for Reconsideration of the staff's grant of the application of Meridian Communications of Idaho, Inc., seeking a new television station on Channel 20 at Idaho Falls, Idaho, File No. BPCT-19950306KF, **IS AFFIRMED**.

13. **IT IS FURTHER ORDERED** that the Opposition of Meridian Communications of Idaho, Inc. to NPG of Idaho, Inc. Application for Review **IS DISMISSED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Meridian Communications of Idaho, Inc. re Application for Construction Permit for New Television Station on Channel 20 Idaho Falls, Idaho*

In its denial of the Application for Review filed by News-Press & Gazette Company, the FCC is somewhat constrained by the precedent of the *Spousal Attribution Order* in determining the real-party-in-interest. Based on evolving business arrangements, I believe that agreements such as those between the Rogers family warrant a wider scope of review to better inform our decision-making. Irrespective of any findings related to the real-party-in-interest here, it is crystal clear to me that the real party of concern must be the consumer in the Idaho Falls-Pocatello DMA.

It is long past time for the FCC to begin a proceeding to examine how shared services, local marketing agreements and other such arrangements affect the localism, diversity and competition that must always undergird the public interest. There may be occasions when it is appropriate for two broadcasters to share some expensive resources. But when the click of the remote displays generally the same news on two distinct channels, we have real problem that needs to be addressed. The spectrum belongs to the American people and it is much too valuable to allow companies to do an end-run around our media ownership rules to increase their profit while denying the areas they serve of the news and information they need.